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No. 775

IN THE

Supreme Court of the United States

October Term, 1954

THE UNITED STATES, *Petitioner*

v.

JAMES JOSEPH ROBERSON, *Respondent*

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

BRIEF FOR THE RESPONDENT IN OPPOSITION

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STATEMENT OF THE CASE

After service in the United States Navy during the last war, James Roberson re-enlisted in July, 1946, for a period of two years. He received an honorable discharge with respect to such enlistment on December 1, 1947 (R. 9, 30). Thereafter, on March 26, 1948, he was tried by a Navy General Court Martial on charges of drunkenness, disobeying the lawful order of his superior officer, desertion, conduct to the prejudice of good order and discipline, breaking arrest, and unauthorized absence. All of these offenses were alleged to have occurred after December 1, 1947 (R. 9, 30).

Based upon his honorable discharge of December 1, 1947, Roberson entered a plea to the jurisdiction of said

Court Martial, which plea was overruled.[1] He was convicted of the aforesaid charges and the Court Martial sentenced him to be confined for a period of four years and to be dishonorably discharged. Upon review by the Secretary of the Navy, the sentence was reduced to a bad conduct discharge and confinement for two years (R. 10, 30). Roberson was imprisoned from March 26 to December 15, 1948, a period of 8 months and 19 days, following which he was released from confinement for restoration to duty, subject to probation. Instead of reporting for duty, Roberson went home, relying upon his honorable discharge of December 1, 1947 (R. 10, 31).

On September 19, 1949, Roberson was again arrested and placed in confinement by the Navy on a charge of desertion. He remained in prison until December 8, 1949, when he was released upon order of the United States District Court for the Northern District of Illinois in habeas corpus proceedings. The District Court held that the action of the Navy General Court Martial was beyond its jurisdiction and therefore void by reason of the honorable discharge granted to Roberson on December 1, 1947 (R. 10, 31).

Thereafter, in a separate proceeding, Roberson applied to the aforesaid District Court for a certificate of innocence which would meet the requirements of 28 U.S.C. § 2513.[2] The certificate was issued under date of February 19, 1952 (R. 10, 11, 31).

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[1] The facts as to Roberson's plea to the jurisdiction were alleged in his petition filed in the Court below (R. 2) and admitted in the Government's answer (R. 7), and are also included as part of the agreed facts in the Pre-Trial Memorandum, page 2. The Pre-Trial Memorandum is included in the record filed with this Court.

[2] The first paragraph of the certificate (Plaintiff's Exhibit No. 1) sets forth the recitals pertaining to his application therefor.

Roberson then brought this action in the Court of Claims under 28 U.S.C. § 1495 and 2513, claiming the statutory maximum of $5000 as damages (R. 1-5). The answer of the Government admitted the factual averments of Roberson's petition,[3] but denied that the certificate of innocence was sufficient to give the Court of Claims jurisdiction under 28 U.S.C. § 1495 and 2513 (R. 7).

At the hearing of this cause, the certificate of innocence was received in evidence as Plaintiff's Exhibit No. 1, its authenticity being conceded by the United States (Pre-Trial Memorandum, pages 3, 4). Following the hearing, the Commissioner submitted his report on October 22, 1953 (R. 9-11) and briefs were thereupon filed by both parties (R. 30).

On April 7, 1954, the cause was argued and submitted to the Court on the merits (R. 12). Following, on October 5, 1954, the Court of Claims rendered its decision and awarded judgment in favor of the plaintiff for the maximum amount of $5000. It may be noted from the holding, however, that Roberson sustained damages in excess of that amount (R. 13-25). The damages were found to have been the direct result of his conviction and imprisonment (R. 31-33).

In the interim between April 7, 1954, when this cause was argued and submitted to the Court for decision, and the announcing of its decision on October 5, 1954, Roberson died, the date of death being July 28, 1954.[4] A motion was subsequently filed to amend the entry of judgment of October 5, 1954, and for entry of said judgment *nunc pro*

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[3] While the factual averments of paragraph 8 of Roberson's petition were denied in the answer (R. 7), the Government admitted them in the Pre-Trial Memorandum, page 3.

[4] A certificate evidencing the death of Roberson on July 28, 1954, was filed with the Court below as an exhibit to a motion to substitute, which motion the Court denied on December 1, 1954.

tunc as of April 7, 1954 (R. 35). By order dated November 30, 1954, the Court withdrew and vacated the judgment of October 5, 1954, and entered judgment for the plaintiff for $5000 *nunc pro tunc* as of April 7, 1954 (R. 37).

In its opinion, the Court below ruled that unjust convictions and imprisonments by courts martial are within the purview of the unjust conviction statute (R. 18). Also, it concluded that the District Court in Illinois had jurisdiction to entertain plaintiff's application for a certificate of innocence and to issue that certificate upon being satisfied that plaintiff was innocent within the meaning of the statutory provision, and that the Court of Claims was bound by such recitals on the question of plaintiff's innocence unless the certificate is set aside upon order of the Circuit Court of Appeals (R. 22). In a concurring opinion, by Judge Whitaker, with whom Chief Judge Jones concurred, it was observed that the habeas corpus court had jurisdiction to hold that an offense was not committed and in granting the certificate, it necessarily held that plaintiff was innocent of any offenses since it was shown that he was not in the military service at the time of the alleged acts (R. 26). Judge Madden dissented on the ground that the District Court did not have jurisdiction to grant the certificate of innocence (R. 27-29).

ARGUMENT

I UNLAWFUL CONVICTIONS AND IMPRISONMENTS BY COURTS MARTIAL ARE WITHIN THE PURVEW OF THE UNJUST CONVICTION STATUTE.

In its petition the Government endeavors to establish that the Unjust Conviction Statute is not applicable to court martial convictions. Reference is made to the title and the legislative history of this statute for the purpose of showing that it was intended to give relief only to those "erroneously convicted in a Federal court" and "in the

United States courts". The Government then asserts that military tribunals are not Federal courts or courts of the United States.

Respondent contends that Section 1495 is clear and unequivocal in its terms and that no basis exists for resort to legislative aids in construing it. The statute confers jurisdiction upon the Court of Claims to render judgment "upon any claim for damages by any person unjustly convicted of an offense against the United States and imprisoned". It may be noted that the language of the section does not specify the courts in which such convictions shall have been imposed nor does it exclude courts martial convictions. Rather, it is directed at granting relief to those unjustly convicted of offenses against the United States. Accordingly, the respondent contends, as stated by this Court in *Fairport R. Co.* v. *Meredith,* 292 U. S. 589, 594, that the "title of an act and the history leading up to its adoption, as aids to statutory construction, are to be resorted to only for the purpose of resolving doubts as to the meaning of the words used in the act in case of ambiguity".

The scope of Section 1495 was very carefully considered by the Court below. It also reviewed the case of *McLean* v. *United States,* 73 F. Supp. 775, wherein the same issue had been raised. In this connection, in the *McLean case,* it was stated at page 777, that:

> "One tried by a court martial is tried for an offense against the United States."

It is submitted, therefore, that the conclusion reached by the Court below in construing Section 1495 conforms with prior decisions and is based upon sound reasoning. Respondent thus contends that unjust convictions and imprisonments by courts martial are within the scope of this statute.

The Government makes reference to 50 U.S.C. § 660, 662 and 740, all provisions of the Uniform Code of Military Justice (Act of May 5, 1950, 64 Stat. 107, et. seq., effective May 5, 1951), as being an indication that courts martial convictions do not come within the Unjust Conviction Statute. In the instant case, Roberson was issued an honorable discharge on December 1, 1947. It is submitted that after his discharge no ground would have existed for him to claim any of the relief suggested by the petitioner. To the contrary, there appears to be no inconsistency or overlapping as between the provisions of 28 U.S.C. § 1495 and 2513 on the one hand, and 50 U.S.C. § 660, 662 and 740 on the other. Sections 1495 and 2513 provide only for damages for an unjust conviction and imprisonment, whereas the sections of Title 50 which are referred to, contain no provision for the awarding of such damages.

II THE ILLINOIS DISTRICT COURT WAS VESTED WITH JURISDICTION TO ISSUE THE CERTIFICATE OF INNOCENCE.

The contention is made by the petitioner that the Illinois District Court was without power to issue the certificate of innocence. In support of its position, the Government says that the ruling of the District Court on the petition for habeas corpus gave it no authority to review the merits of Roberson's conviction by the Navy General Court Martial.

The Court below reviewed at some length the Government's contention on this issue. It noted the lack of any indication in the statute "that a person whose court martial conviction has been set aside by writ of habeas corpus is less entitled to a hearing upon his application for a certificate of innocence than the person whose civilian court conviction has been set aside by an appellate court on grounds having nothing to do with his guilt or innocence", making reference to *Andolschek* v. *United States*, 111 Ct. Cls. 567 (R. 19). In the concurring opinion

by Judge Whitaker, it was observed that the District Court had jurisdiction to hold that an offense was not committed. Moreover, it was stated in the concurring opinion, that in granting the habeas corpus writ, the District Court necessarily held that plaintiff was innocent of any offense since it was shown that he was not in the military service at the time of the alleged acts. It was concluded, therefore, that the District Court "had complete jurisdiction to hold that he was innocent of any offense", and could "certify to that fact" (R. 26).

Respondent contends that the District Court had the power to determine, in the habeas corpus proceeding, whether the Navy Court Martial possessed the requisite jurisdiction to try Roberson. In the exercise of that power, the District Court found that his honorable discharge of December 1, 1947, was valid. It thereupon set aside the court martial conviction and held it to be void. Respondent submits that this Court has, in many similar cases, upheld the type of action taken by the Illinois District Court in this instance. Notable among such cases is that of *Collins* v. *McDonald*, 258 U.S. 416, 418, wherein it was stated, as follows:

> ". . . the court-martial being a special statutory tribunal, with limited powers, its judgment is open to collateral attack, and unless facts essential to sustain its jurisdiction appear, it must be held not to exist."

Another similar case is that of *Humphrey* v. *Smith*, 336 U.S. 695. On the issue here in question this Court observed at page 696, as follows:

> "It is contended that the court-martial was without jurisdiction to try respondent. If so the court-martial exceeded its lawful authority and its judgment can be invalidated despite the limited powers of a court in habeas corpus proceedings."

In *United States Ex Rel Hirshberg* v. *Cooke*, 336 U.S. 210, the petitioner had been convicted by Navy Court Mar-

tial of an offense which occurred in a prior enlistment and for which he had received an honorable discharge. Petitioner then sought a writ of habeas corpus in a District Court charging that the court martial judgment was void because of want of statutory power to convict him for an offense committed, if at all, during his prior enlistment. The District Court sustained the petitioner's contention, which position was upheld by this Court in reversing the decision of the Circuit Court of Appeals.

It follows, therefore, that since the Illinois District Court had the power to set aside the court martial conviction and hold it to be void for lack of jurisdiction, similarly, it had the authority, conferred by the provisions of 28 U.S.C. 2513 to issue the certificate of innocence. The holding of the Court below, giving such effect to the unjust conviction statute is consonant with the above-cited decisions of this Court.

For the foregoing reasons, the respondent contends that this ruling of the Court below was correct.

III THE ENTRY OF JUDGMENT NUNC PRO TUNC AS OF APRIL 7, 1954, CONFORMS WITH ESTABLISHED PRINCIPLES OF LAW AND RENDERS MOOT THE QUESTION RAISED BY PETITIONER CONCERNING ABATEMENT OF THE ACTION.

The record establishes that this cause was argued in the Court below and submitted on the merits on April 7, 1954. Roberson died on July 28, 1954, and the opinion of the Court was rendered October 5, 1954. The judgment was entered on November 30, 1954, nunc pro tunc as of April 7, 1954.

Respondent contends that the Court below had the inherent power to cause the judgment to be entered nunc pro tunc as of the date it took this case under advisement. In support of this position, respondent relies upon the holding of this Court in *Mitchell* v. *Overman* 103 U.S. 62, 64, 65, wherein it was stated, as follows:

> "The adjudged cases are very numerous in which have been considered the circumstances under which courts may properly enter a judgment or a decree as of a date anterior to that on which it was in fact rendered . . . the rule established . . . is that where the delay . . . arises from the act of the Court . . . the judgment . . . may be entered retrospectively . . . ."

A number of cases have been decided under Federal statutes wherein because of the death of one of the parties to the cause of action, a judgment nunc pro tunc has been entered in the interests of justice. In this respect, reference is made to the following cases:

Quon Quon Poy v. *Johnson, Commissioner,* 273 U.S. 352;

Harris v. *Commissioner,* 340 U. S. 106;

Barnett v. *United States* (9 C.C.A.-1936), 82 F. (2d) 765;

United States v. *Paddock* (1946), 68 F. Supp. 407; and

MacDonald v. *DuMaurier,* 75 F. Supp 653.

In addition, respondent desires to list other cases in which the general proposition of law herein advanced has been upheld. These are as follows:

Richardson v. *Green,* 130 U.S. 104;

Bell v. *Bell,* 181 U.S. 175;

Lenoir Car Works v. *Trinkle* (6 C.C.A.-1915), 228 Fed. 634;

Madden v. *LaCofske* (9 C.C.A.-1934), 72 F. (2d) 602; and

In Re Pillsbury's Estate (1917), 175 Cal. 454, 166 Pac. 11, 3 A.L.R. 1396.

Other authorities to which the respondent makes reference are the annotations in 3 A.L.R. 1403 and 68 A.L.R.

261 and 30 *Am. Jur.*, Judgments, Sections 43 to 51, inclusive. In section 43 thereof, as to the authority to render such a judgment, it is said that the "power is not dependent upon statutory authorization but exists at common law. It has been held to be a discretionary power . . .". Further on, in Section 50 of this treatise, it is stated as follows:

> "The fact that an action is of a kind which does not survive the death of a party thereto does not preclude the application of the rule authorizing the rendition of a judgment nunc pro tunc after the death of a party, whether the party who dies is the plaintiff in whose favor, or the defendant against whom, the verdict was returned."

It is submitted that the facts of this case bring it squarely within the principle enunciated in *Mitchell* v. *Overman*, supra. Buttressed by the other decisions and authorities cited herein, the respondent submits that the action of the Court below in entering the judgment nunc pro tunc as of April 7, 1954, gives full effect thereto. Respondent thus contends that such action on the part of the Court below was correct and proper and is in the interests of justice. Respondent says also, that the entry of the judgment nunc pro tunc thereby rendered moot any question concerning abatement of the action.

CONCLUSION

Statistics are presented by the petitioner to indicate that complications could arise from the instant decision by reason of the volume of cases heard by military tribunals. Respondent contends that the issues herein involved are neither different from, nor broader than, those presented by any other courts martial conviction where its jurisdiction is tested by means of a habeas corpus proceeding. Accordingly, it would seem that in the circumstances no

cause for concern is justified. Moreover, this petition does not appear to raise any question which warrants the exercise of jurisdiction within the scope of Rule 19 of this Court.

It is respectfully submitted, therefore, that the petition for a writ of certiorari should be denied.

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